

APR 01 2002

PATENT APPLICATION
ATTORNEY DOCKET 29715/35152R

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of: Giroir et al.)
U.S. Patent No. 5,990,086)
Issued Date: November 23, 1999)
For: Therapeutic Uses of BPI Protein)
Products for Human Meningococcemia)
Filed: Herewith)
Probable Group Art Unit: 1646)
Probable Examiner: A. Mohamed)

I hereby certify that this paper and the
documents identified herein are being
deposited with the United States Postal
Service on _____, in an
envelope addressed to the Assistant
Commissioner of Patents, Washington,
D.C. 20231 utilizing the "Express Mail
Post Office to Addressee" service of the
United States Postal Service under
Mailing Label No. _____

CONSENT OF ASSIGNEE TO REISSUE APPLICATION

Box REISSUE
Commissioner for Patents
Washington, D.C. 20231

Sir:

The undersigned, on behalf of Board of Regents, The University of Texas System, the
assignee of an undivided interest in the above-identified U.S. patent, the invention described
therein and improvements thereof, any and all applications on such inventions or
improvements, and any and all patents obtained from such applications, hereby assents to the
accompanying application for reissue.

Respectfully submitted,

By:

Name Cullen M. Spafford

Vice Chancellor and General Counsel

Title

November 12, 2001



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REISSUE DECLARATION

Box REISSUE
Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

1. We, Brett P. Giroir and Patrick J. Scannon, as named joint inventors, hereby declare that our residence, post office addresses and citizenship are as stated below after our names. We believe we are the original, first and joint inventors of the subject matter which is described and claimed in U.S. Patent No. 5,990,086 (hereinafter "the '086 Patent"), issued on November 23, 1999, entitled Therapeutic Uses of BPI Protein Products for Human Meningococcemia, and for which invention we now solicit a broadening reissue patent.

2. We declare that XOMA Technology Ltd. has been assigned inventor Scannon's entire right, title and interest in and to the '086 Patent and the Board of Regents, The University of Texas Systems has been assigned inventor Giroir's entire right, title and interest in and to the '086 Patent as evidenced by the assignment recorded on February 12, 1999, at Reel 9767, Frame 0521, the 37 C.F.R. §3.73(b) Certificates filed herewith, and the attached Exhibits A and B.

3. We hereby state that we have reviewed and understand the contents of the '086 patent, including the claims, as amended by any amendment specifically referred to in the inventor's oath.

4. We believe the original patent to be partly inoperative or invalid by reason of the patentee claiming less than the patentee had the right to claim in the patent. The patentees incorrectly made reference to prior copending applications. The benefit of earlier applications U.S. Ser. No. 08/378,228, filed January 24, 1995, U.S. Ser. No. 08/291,112, filed August 16, 1994, and U.S. Ser. No. 08/188,221, filed January 24, 1994 should not have been relied upon for priority. By including the additional early applications, the term of the '086 patent has been unnecessarily reduced; therefore, by removing these applications from the priority claim, the reissue patent issuing from the present reissue application should be granted a patent term 2 years and 3 1/2 months extended beyond that of the original patent.

5. We hereby claim the benefit under 35 U.S.C. §120 of any United States application(s) or PCT international application(s) designating the United States of America listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior application(s) in the manner provided by the first paragraph of 35 U.S.C. §112, we acknowledge the duty to disclose to the Office all information known to me to be material to patentability as defined in 37 C.F.R. §1.56 which occurred between the filing date of the prior application(s) and the national or PCT international filing date of this application:

<u>08/927,437</u> (Application Serial Number)	<u>September 10, 1997</u> (Day, Month, Year Filed)	<u>Patented</u> (Status-Patented, Pending or Abandoned)
<u>08/644,287</u> (Application Serial Number)	<u>May 10, 1996</u> (Day, Month, Year Filed)	<u>Abandoned</u> (Status-Patented, Pending or Abandoned)

6. We acknowledge a duty to disclose information of which we are aware and which is material to the examination of this reissue application in accordance with 37 CFR §1.56(a).

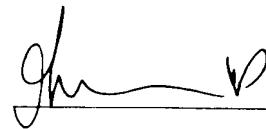
7. We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title

18 of the United States Code and that such willful false statements may jeopardize the validity of this reissue application or any reissue patent issued thereon.

1. Full Name of First Joint Inventor:

Brett P. Giroir

First Inventor's Signature:



Date:

12/5/01

Country of Citizenship:

United States of America

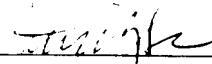
Residence and Post Office Address:

6231 Pemberton Dr.
Dallas, TX 75230

2. Full Name of Second Joint Inventor:

Patrick J. Scannon

Second Inventor's Signature:



Date:

12/14/01

Country of Citizenship:

United States of America

Residence and Post Office Address:

176 Edgewood Avenue
San Francisco, CA 94117

STATE OF ARIZONA



Office of the
CORPORATION COMMISSION

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

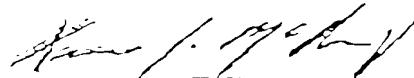
I, BRIAN C. MCNEILL, EXECUTIVE SECRETARY OF THE ARIZONA CORPORATION COMMISSION, DO HEREBY CERTIFY THAT THE RECORDS IN THIS OFFICE SHOW THAT, XOMA CORPORATION A DELAWARE CORPORATION (NO RECORD) MERGED WITH XOMA ARIZONA, INC. AN ARIZONA CORPORATION ON THE 29th DAY OF DECEMBER, 1998 AND ON THE SAME DATE CHANGED ITS NAME TO XOMA CORPORATION AND, CHANGED ITS DOMICILE TO BERMUDA.

I FURTHER CERTIFY THAT XOMA CORPORATION CHANGED ITS NAME TO XOMA LTD., A BERMUDA CORPORATION AUTHORIZED TO DO BUSINESS IN THE STATE OF ARIZONA SEE SURVIVOR AS PROVIDED BY

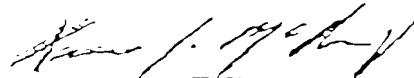
IN WITNESS WHEREOF, I have hereunto
set my hand and affixed the official
seal of the Arizona Corporation
Commission. Done at Phoenix, the
Capital, this

20th day of DECEMBER,

1999, A.D.



EXECUTIVE SECRETARY

BY 
Chris Castillo





BERMUDA

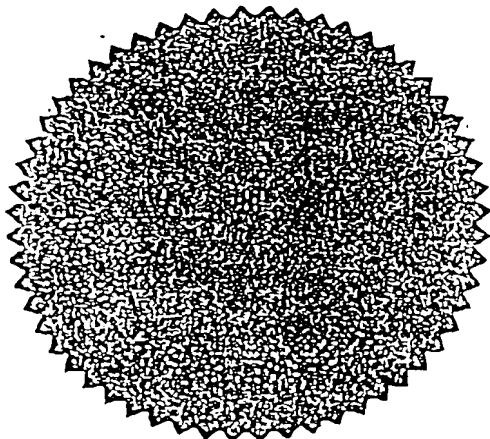
CERTIFICATE OF CONTINUANCE

I hereby in accordance with section 132C(4)(d) of the *Companies Act 1981* issue this Certificate of Continuance and do certify that on the 31st day of December, 1998

XOMA Ltd.

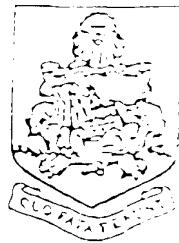
was registered by me in the Register maintained by me under the provisions of the said section and that the status of the said company is that of an exempted company.

Given under my hand and the Seal of the REGISTRAR OF COMPANIES this 14th day of January, 1999.



for Registrar of Companies

A handwritten signature in black ink, appearing to read "G. J. C." or "G. J. C. / C.", is written over the date and the "for" text.



BERMUDA
THE COMPANIES ACT 1981

MEMORANDUM OF CONTINUANCE OF
COMPANY LIMITED BY SHARES
(Section 132C(2))

MEMORANDUM OF CONTINUANCE
OF
XOMA Ltd.
(hereinafter referred to as the "Company")

1. The liability of the members of the Company is limited to the amount (if any) for the time being unpaid on the shares respectively held by them.
2. The Company is an exempted company as defined by the Companies Act 1981.
3. The authorised share capital of the Company is US\$85,000 divided into 70,000,000 Common Shares of par value US\$.0005 each and 1,000,000 Preference Shares of par value US\$.05 each. The minimum subscribed share capital of the Company is US\$12,000.
4. The Company shall not have power to hold land situated in Bermuda.
5. Details of Incorporation:

The Company was incorporated under the name "XOMA Arizona, Inc." in the State of Arizona, U.S.A. on November 10, 1998, as a wholly owned subsidiary of Xoma Corporation, a corporation which was incorporated in the State of Delaware, U.S.A. on February 24, 1981. On December 29, 1998, Xoma Corporation merged with and into the Company, which thereby changed its name to "XOMA Corporation".

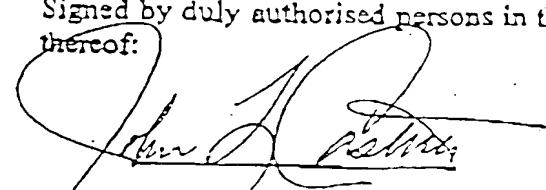
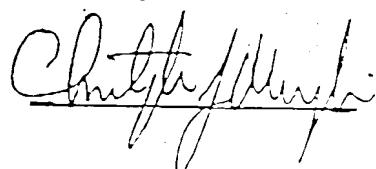
6. The objects of the Company from the date of continuance are:
 - (i) to create, develop or otherwise acquire and to hold, sell, dispose of, manage, license and otherwise deal in and/or with products and processes of all kinds whatsoever;

- (ii) to create, develop or otherwise acquire and to hold, sell, dispose of, manage, license and otherwise deal in and or with patents, patent applications, know how, trade secrets, trade names, trademarks and trademark applications, service marks and service mark applications, copyrights and copyright applications, computer software, tangible and intangible personal property and forms of intellectual property of all kinds whatsoever;
- (iii) to develop, operate, advise or act as technical consultants with respect to life sciences, pharmaceutical products and processes or intellectual property of all kinds whatsoever; and
- (iv) packaging of goods of all kinds;
- (v) buying, selling and dealing in goods of all kinds;
- (vi) designing and manufacturing of goods of all kinds;
- (vii) mining and quarrying and exploration for metals, minerals, fossil fuels and precious stones of all kinds and their preparation for sale or use;
- (viii) exploring for, the drilling for, the moving, transporting and re-finishing petroleum and hydro carbon products including oil and oil products;
- (ix) scientific research including the improvement, discovery and development of processes, inventions, patents and designs and the construction, maintenance and operation of laboratories and research centres;
- (x) land, sea and air undertakings including the land, ship and air carriage of passengers, mails and goods of all kinds;
- (xi) ships and aircraft owners, managers, operators, agents, builders and repairers;
- (xii) acquiring, owning, selling, chartering, repairing or dealing in ships and aircraft;
- (xiii) travel agents, freight contractors and forwarding agents;
- (xiv) dock owners, wharfingers, warehousemen;
- (xv) ship chandlers and dealing in rope, canvas oil and ship stores of all kinds;
- (xvi) all forms of engineering;
- (xvii) farmers, livestock breeders and keepers, graziers, butchers, tanners and processors of and dealers in all kinds of live and dead stock, wool, hides, tallow, grain, vegetables and other produce;

- (xviii) acquiring by purchase or otherwise and holding as an investment: inventions, patents, trade marks, trade names, trade secrets, designs and the like;
- (xix) buying, selling, hiring, letting and dealing in conveyances of any sort; and
- (xx) employing, providing, hiring out and acting as agent for artists, actors, entertainers of all sorts, authors, composers, producers, engineers and experts or specialists of any kind;
- (xxi) to acquire by purchase or otherwise hold, sell, dispose of and deal in real property situated outside Bermuda and in personal property of all kinds wheresoever situated;
- (xxii) to enter into any guarantee, contract of indemnity or suretyship and to assure, support or secure with or without consideration or benefit the performance of any obligations of any person or persons and to guarantee the fidelity of individuals filling or about to fill situations of trust or confidence.

7. From the date of continuance the Company shall, pursuant to Section 42 of The Companies Act 1981, have the power to issue preference shares which are, at the option of the holder, liable to be redeemed.

Signed by duly authorised persons in the presence of at least one witness attesting the signature thereof:



Witness

Witness

Dated this 29th day of December, 1998

ASSIGNMENT

WHEREAS, XOMA Ltd., a company organized and existing under the laws of Bermuda (hereinafter "ASSIGNOR"), and having a registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, is the owner of the entire right, title and interest in the inventions or improvements disclosed in the patents and patent applications set out in Schedule A, and an undivided one-half interest in the inventions or improvements disclosed in the patents and patent applications set out in Schedule B.

WHEREAS, XOMA Technology Ltd., a company organized and existing under the laws of Bermuda (hereinafter "ASSIGNEE"), and having a registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, desires to acquire ASSIGNOR's entire ownership interest as described above, in accordance with the Exchange Agreement duly entered into between ASSIGNOR and ASSIGNEE as of May 31, 1999;

NOW, THEREFORE, to all whom it may concern be it known that for and in consideration of the covenants of said Exchange Agreement, and of other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNOR does hereby assign and transfer unto said ASSIGNEE, its successors, assigns, and legal representatives, ASSIGNOR's entire right, title and interest in and throughout the United States of America (U.S.), its territories and all foreign countries, including the right to sue for and collect for all past, present and future damages and infringement, in and to said inventions and improvements as described in said patents and patent applications, together with ASSIGNOR's entire right, title and interest in and to said patents and patent applications, and such patents as may issue thereon or claim priority under U.S. or international convention; said inventions, improvements, patents and patent applications to be held and enjoyed by said ASSIGNEE for its own use and behalf, and for its successors, assigns and legal representatives, to the full end of the term for which said patents may be granted as fully and entirely as the same would have been held by ASSIGNOR had this assignment and sale not been made; and ASSIGNOR hereby conveys all of ASSIGNOR's rights arising under or pursuant to any and all U.S. or international agreements, treaties or laws relating to the protection of industrial property obtained by filing any such applications for patents. ASSIGNOR hereby acknowledges that this assignment, being of ASSIGNOR's entire right, title and interest in and to said inventions and improvements, carries with it the right in ASSIGNEE to apply for and obtain from competent authorities in all countries of the world any and all patents by attorneys and agents of ASSIGNEE's selection and the right to procure the grant of all patents to ASSIGNEE for its own name as assignee of ASSIGNOR's entire right, title and interest therein.

AND, ASSIGNOR hereby further agrees for itself and its successors, assigns and legal representatives to execute upon request any other lawful documents and likewise to

perform any other lawful acts which may be deemed necessary to secure fully the aforesaid rights to said ASSIGNEE, its successors, assigns, and legal representatives, but at its or their expense and charges, including, the execution of applications for patents in the U.S. and in foreign countries; the execution of substitution, reissue, divisional or continuing applications; and preliminary or other statements or the giving of testimony in any interference or other proceeding in which said inventions and improvements or any application or patent directed thereto may be involved; and ASSIGNOR further hereby authorizes ASSIGNEE or its attorneys or agents to insert any correct serial number and filing date into this assignment, if appropriate.

AND, ASSIGNOR hereby authorizes and requests the Commissioner of Patents of the United States and the appropriate officers who have been vested with similar authority in all countries of the world to issue such patents as shall be granted upon said patent applications or other patent applications based thereon to said ASSIGNEE, its successors, assigns and legal representatives.

ASSIGNOR hereby represents that ASSIGNOR has full right and authority to convey the entire interest herein assigned, and that ASSIGNOR has not executed, and will not execute, any agreement in conflict therewith.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed and set our hands and affixed our seals the dates set forth below.

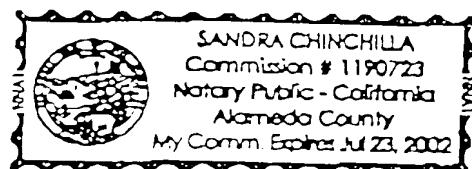
XOMA Ltd.

By:

Name: John L. CastelloTitle: Chairman of the BoardPresident andChief Executive Officer

STATE OF California)
 COUNTY OF Alameda) ss

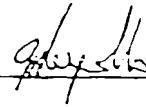
Subscribed and sworn to before me, by the above-named John L. Castello
 this 22nd day of October, 1999.



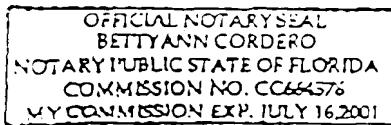
Sandra Chinchilla
 Notary Public, Sandra Chinchilla
 My Commission Expires July 23, 2002

NOMA Technology Ltd

By

Name: G. James ReynoldsTitle: DirectorSTATE OF Florida
COUNTY OF Broward ssSubscribed and sworn to before me, by the above-named G. James Reynolds
this 6th day of December, 1999

Notary Public

My Commission Expires: 7/16/2001

Patent Rights

i) Title: Therapeutic Uses of BPI Protein Products for Human Meningococcemia

Inventors: Giroir, Scannon

Based on PCT/US97/08016 [WO 97/42966] which corresponds to U.S. Application No. 08/644,287 filed May 10, 1996.

<u>Country</u>	<u>Application No.</u>	<u>Status / Patent No.</u>
EPO	97924679.0	Pending